OPTIONS PAPER

THE COMPENSABILITY OF DISABILITIES RESULTING FROM WORKPLACE STRESSORS

The Workers' Compensation Board invites submissions regarding this options paper.

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Submissions must be received by November 15, 1989

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EXECUTIVE SUMMARY

OPTIONS PAPER

THE COMPENSABILITY OF DISABILITIES RESULTING FROM WORKPLACE STRESSORS

Issue

The Board currently has no formal policy on compensation for psychiatric disabilities resulting from exposure to workplace stressors over time. However, it has been the Board's practice to provide compensation in claims for psychiatric disability related to acute stressors, that is, exposure to stressors that can be characterized as "chance events". The necessary connection to the workplace is established by requiring that the provoking work incident (the stressor) be sudden, shocking and life-threatening.

First question

An initial question is whether disabilities related to gradual exposure to workplace stressors are compensable under the Workers' Compensation Act ("the Act"). The general conclusion from the consultation on the previous discussion paper was that the Act appears to allow compensation for disabilities related to workplace stressors under the rubric of "disablement arising out of and in the course of employment".

It is also conceivable that these claims could be allowed as an industrial disease but to allow claims on that basis, epidemiological evidence would be required. That evidence does not currently exist.

WCAT's approach

In Decision No. 918, the WCAT panel, though denying the claim, stated that such claims would be allowed if it could be established that the workplace stressor caused the disability. It adopted an approach which required either a showing of unusual stressor or clear and convincing evidence that the usual stressors of the job predominated in producing the injury. The WCAT panel in Decision No. 1018/87 appears not to have accepted fully the standard set out in Decision No. 918, but again denied the claim.

Scientific aspects

An analysis of the scientific literature and the responses from external consultation indicate that there are significant gaps in the current knowledge base about workplace and non-workplace stressors and the interaction between them. Although the volume of research is large, there are few studies in the medical literature which provide clear evidence demonstrating cause and effect. Though there are aspects of the workplace that are generally considered to be stressors, their precise effect on the development of illness is not well-established.

Professional evidence is critical in establishing that a psychiatric disability does indeed exist. Many jurisdictions, either by policy or

practice as dictated by the court, require psychiatric evidence that follows behavioural descriptions and diagnostic categories as outlined in the American Psychiatric Association's compendium of mental disorders, DSM-III-R (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised). This ensures not only that an accepted and well understood psychiatric disability is present, but that it is documented according to standards generally recognized in the health care community. This is particularly important given the difficulty of defining the nature and degree of a psychiatric disability.

Establishing work-relatedness

Once disability has been established, decisions regarding work-relatedness will always require consideration of the quality of evidence available and the amount of contribution that work and non-work factors made to the disability. In some jurisdictions, to show work-relatedness, there is a requirement for the workplace stressor to be unusual - as measured against co-workers, workers in the same industry/occupation or workers in general.

The extent of workplace contribution to the disability is also an important issue. In Decision No. 918 WCAT adopted the line of authority adopted by the Supreme Court of Maine requiring that a predominant contribution of a workplace stressor must exist if the stressor is of a usual nature. In other cases WCAT has adopted a lower threshold requirement - that of a significant contribution. Within the context of the Ontario workers' compensation system it is unclear whether predominance, if desired as a policy matter, would require an amendment to the Act.

Costs

While the projection of costs is extremely difficult, there would certainly be some increases in both administrative and benefit costs. The extent of these cost increases will vary according to the policy option selected, the volume and complexity of claims and the expected implementation of a treatment program.

Interim policy

Given the concerns that have been expressed about the ability of the workers' compensation system to satisfactorily identify disabilities that are work-related, and the medical and scientific uncertainty that surrounds this issue, an interim policy approach is suggested. Recognizing that the Board is at the frontier of this issue in relation to other Canadian jurisdictions, once some experience has been gained, consideration could be given to modifying the approach.

Options

Four options are suggested with respect to the compensability of disabilities resulting from workplace stressors. All would require that a psychiatric disability according to DSM-III-R be established. Providing that there is statutory authority to require a predominant contribution,

the options vary in their approach to the determination of work-relatedness as follows:

1. Provide compensation benefits when there is evidence of a psychiatric disability to which unusual workplace stressors have made a predominant contribution.

2. Provide compensation benefits when there is evidence of a psychiatric disability to which unusual workplace stressors have made a significant contribution.

3. Provide compensation benefits when there is evidence of a psychiatric disability to which workplace stressors have made a predominant contribution.

4. Provide compensation benefits when there is evidence of a psychiatric disability to which workplace stressors have made a significant contribution.

These four options have been developed from the content of the previous discussion paper, the responses from external consultation and the issues raised in this paper.

The content of this paper and these options are presented for consideration by the Board's external stakeholders over the period of July to November 15, 1989.

OPTIONS PAPER

THE COMPENSABILITY OF DISABILITIES RESULTING FROM WORKPLACE STRESSORS

I. INTRODUCTION

In recent years workplace stressors have come to be recognised as factors which may affect workers' health. In light of this recognition, the Board is reviewing its practices relating to compensation for disabilities resulting from workplace stressors.

To assist in the external consultation process and focus the issues in this review, the Board prepared a detailed discussion paper. The paper considered the scientific literature on workplace stressors, the potential role of psychiatric evidence in claims adjudication, practices of other Canadian and U.S. jurisdictions, and the various legal tests now in use. The paper was distributed in February, 1989 for comment to the Board's external consultation group, all subscribers to the Board's Manual services, organizations representing health care professionals, and other individuals with expertise or experience in this field.

A report summarizing the responses from external consultation was considered at the Board of Directors' meeting on June 2, 1989 (attached as Appendix A). At the meeting, the Board of Directors requested that another paper be prepared, outlining some options for the compensation of disabilities resulting from workplace stressors. This current paper is based on an analysis of the earlier discussion paper and the submissions received in response to the external consultation process.

II. BACKGROUND

1. Current Board practice

A) "Mental-Mental" Claims

There is currently no formal policy on compensation for psychiatric disabilities resulting from workplace stressors. However, it has been the Board's practice to provide compensation in claims for psychiatric disability related to acute stressors, that is, exposures to stressors that can be characterized as "chance events". The necessary connection to the workplace is established by requiring that the provoking workplace chance event (the stressor) be sudden, shocking and life-threatening.

The Board's policy on psychotraumatic disability (Bd.M. #11, Feb. 9, 1982, Page 4951 attached as Appendix B) does not refer specifically to stressors, although the Claims Adjudication Branch Manual does direct Adjudicators to refer claims with the diagnosis of "stress" to

a Senior Medical Advisor for review.

A previous Board policy (Bd.M. #1, July 23, 1974, Page 4362 attached as Appendix C) allowed claims for a psychological disability which was attributable to the accident or its sequelae. It stated that entitlement may exist "as a direct result from shock resulting from a frightening industrial occurrence". Again, the emphasis was on a chance event.

B) "Mental-Physical" Claims

Board policy allows compensation for cardiac claims when a causal relationship is established between the cardiac condition and the accident. One ground of entitlement for a cardiac condition is acute emotional "stress" (a chance event) with no significant delay in the onset of symptoms (Bd.M. #3, November 25, 1980, Page 4878).

Given the uncertainty of medical knowledge about the interplay between physical and mental states, other types of mental-physical claims may be considered on a case-by-case basis. Even on a case-by-case basis, however, the lack of precise and consistent information characterizing the interaction between mental causal factors and physical disabilities makes the workers' compensation task of establishing work-relatedness extremely difficult.

2. **Are disablements related to workplace stressors compensable under the Workers' Compensation Act?**

As outlined above, current Board practices already recognize that psychiatric disabilities can result from acute exposure to workplace stressors because the acute exposures are chance events and included in the definition of "accident" in s.1(1)(a)(ii) of the Workers' Compensation Act ("the Act").

The general conclusion from the consultation on the previous discussion paper was that the Act appears also to allow compensation for disabilities related to workplace stressors that affect a worker over time under the rubric of "disablement arising out of and in the course of employment".

It is also conceivable that these claims could be allowed as an industrial disease but to allow claims on that basis, epidemiological evidence would be required. That evidence does not currently exist.

Some have made the argument that claims related to mental stressors were never meant to be compensated under the Act. However, the Act does not distinguish between physical and mental disabilities.

3. Other Canadian jurisdictions

Canadian Boards generally allow physical-mental claims and mental-mental claims that result from acute workplace stressors. Mental-mental claims, where the stressors are not of an acute nature, are only considered for compensation in Saskatchewan and Quebec. There, these claims are typically adjudicated on a case by case basis and there are no specific policies that specify the conditions that must be present for entitlement to be granted in these jurisdictions.

4. The American experience

In many United States workers' compensation jurisdictions, there has been recognition of the compensability of psychiatric disabilities resulting from gradual exposure to workplace stressors. For the most part, the recognition of these disabilities has been prompted by court decisions.

As the Board's previous discussion paper established, the standards for allowing such claims vary significantly among jurisdictions. Some of the broadest standards were developed by the courts in individual cases and then given to the workers' compensation boards to administer generally. Some jurisdictions, such as California and Michigan, adopted standards that could be considered liberal in comparison to others. In these instances, the state legislatures later overturned or are now overturning those standards to be replaced by more restrictive approaches. This may reflect the legislators' view that the evidentiary problems in these claims cast doubt on the accuracy of decision-making in all but the most extreme cases.

This evolution in the general approach based on experience with these claims suggests that it may be prudent to adopt an incremental approach to this issue. An incremental model provides the best use of experience by enabling the identification of perhaps otherwise unforeseen effects that can be suitably addressed by policy.

5. WCAT's approach

WCAT has not yet allowed a claim related to workplace stressors that have affected a worker over time. However, it has stated that such claims are compensable under the Act as disablements.

In Decision No. 918, the WCAT panel discussed the conditions for entitlement in the cases in which workplace stressors have played a role:

> A panel must further be satisfied that the worker suffers from a disability. The panel must further be satisfied that the disability is compatible with the conditions of employment. Finally, and perhaps the issue of greatest difficulty, a panel must be satisfied that the conditions of employment were a significant contributing factor to the resulting disability.

Because the panel concluded that the worker in the case did not face unusual stressors at work, they did not deal expressly with the evidentiary requirements in such circumstances. However, the panel stated at p.17 that it would not allow the claim,

> ... unless we are satisfied by clear and convincing evidence that [the worker's] condition was in fact predominantly attributable to the not unusual degree of stress in his employment - that is to say, that the workplace stress "stands out" as a significant contributor to the disability.

In Decision No. 1018/87, another panel commented that Decision No. 918 may not have fully set standards for the adjudication of claims where workplace stressors have played a role. However, the claim considered in the decision was not allowed and the argument was not completely developed.

6. State of scientific knowledge

An analysis of the scientific literature and the responses from external consultation confirm that there are significant gaps in the current knowledge base with respect to workplace and non-workplace stressors and the interaction between them. Although the volume of research is large, there are few medical research studies which provide clear evidence characterizing the nature of the relationship between cause and effect. While there are aspects of the workplace that are generally considered to be stressors, the mechanisms by which they act and their precise role in the development of illnesses are not well-established.

In the previous discussion paper, the research linking the occurrence of stressor-related disorders to certain occupations based on their apparent high stressor levels was discussed. As suggested in that paper, the comparison of occupations according to their relative level of stressors is not a useful approach. Aside from its methodological shortcomings, this approach is further complicated by the evidence that different occupations seem to be associated with different kinds of disabilities. That is, the stressor-related illnesses that may be generally associated with specific occupations may be quite varied.

The deficiencies in current scientific knowledge do not, however, mean that no connection whatsoever can be made between a workplace stressor and an ill-health condition. Rather, the literature suggests that while broad generalizations are impossible at this time and appropriate epidemiological findings are not available, in individual cases it may be possible to establish a strong relationship between a workplace stressor and a subsequent disability.

7. Evidence of a psychiatric disability

In claims in which workplace stressors have played a role, evidence is

of course required to establish that a psychiatric disability does indeed exist. Many jurisdictions, either by policy or practice dictated by the courts, require psychiatric evidence that follows behavioural descriptions and diagnostic categories as outlined in the American Psychiatric Association's compendium of mental disorders, DSM-III-R (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised).

This ensures not only that a psychiatric disability is present, but that it is documented according to standards generally accepted in the health care community. Given the difficulty in defining the nature and degree of a psychiatric disability, other kinds of evidence, in addition to professional opinions, may be important.

8. **Complexity of the work-relatedness issue**

Many of the responses from external consultation highlighted the difficulties in establishing work-relatedness for disabilities that are multifactorial in etiology. Clearly, there are many factors, both work and non-work related, that can lead to the development of a disability.

The difficulty in pinpointing the cause of psychiatric illnesses is exacerbated by the subjective nature of the findings. In the compensation field generally, there is more certainty when there is physical evidence that can be objectively measured and that can link a disability to a workplace.

It is generally recognized that psychiatric disabilities may be work-related. In terms of the work-relatedness question in a specific case, professional evidence can help to establish whether the workplace had an active role in the development of the psychiatric illness. Alternatively, the workplace may be considered to have played an incidental role if it was merely a focus for psychiatric symptoms, a retrospective rationalization for a psychiatric disability, or the setting where a psychiatric condition was manifest.

In determining work-relatedness for psychiatric disabilities that are attributed to exposure to stressors, it is critical to evaluate the relative contribution of workplace and non-workplace factors. Reports relating to the psychiatric illness should comment on the relative importance of these two sources of stressors.

III. DISCUSSION

The following discussion highlights the policy issues that must be considered in the compensation for disabilities resulting from workplace stressors.

1. **Establishing a disability**

Prior to any consideration of work-relatedness, there must be evidence

that a disability does indeed exist. As noted in the earlier discussion, the requirement imposed by some other jurisdictions that psychiatric reports utilize DSM-III-R diagnoses sets some standards for the establishment of disability. Evidence is critical to the substantiation of a psychiatric condition that disables a worker from continuing to perform regular job duties.

2. **Establishing work-relatedness**

Once disability has been established, decisions regarding work-relatedness for psychiatric disabilities resulting from workplace stressors will always require consideration of the quality of evidence available and the amount of contribution that the workplace had on the disability.

A) Quality of evidence

Stressors, whether found in the workplace or not, can be considered as either usual or unusual. Usual workplace stressors include the kind of event or circumstance which may be expected to occur as part of normal daily workplace experience. Conversely, an unusual workplace stressor is an event or circumstance that is not expected, or typical, of the workplace where the worker is employed.

The three principal comparison groups that have been used in other jurisdictions to determine unusualness are: the average worker in the labour market as a whole; the average worker in the same occupational/industrial group; and co-workers in the same occupational group, with the same employer. While there are differing arguments in support of each of these approaches, it may be most apt and administratively feasible to use the last comparison group and contrast the stressors experienced by the worker with those of fellow workers. It is difficult, even outside a large administrative adjudication system, to compare stressors to those experienced across the province in an industry, or across all industries. Since the choice of the comparison group is controversial, the opinion of stakeholders is especially sought on this point.

In many U.S. jurisdictions compensation is only considered when the stressor that led to the psychiatric disability is unusual. Proponents of this approach suggest that in psychiatric claims where the etiology is multifactorial, and there is an inevitable intertwining of workplace or non-workplace aspects, the best method to ensure work-relatedness is to require that the stressor is unusual.

Another approach is to accept that any workplace stressor may lead to disability. In this approach, an ordinary workplace stressor that leads a particular individual to become psychiatrically disabled is sufficient to establish work-relatedness.

For example, the Board currently grants entitlement to benefits to workers who have suffered a cardiac problem after exposure to an acute stressor if the acute stressor and the cardiac problem are closely related in time. This policy does not impose a different 'standard' of proof; rather, it recognizes that the work-relatedness of the cardiac problem can only be established by a clear and convincing connection in time.

Where disability has resulted from a stressor, the nature and degree of unusualness of a workplace stressor has an effect on these standard evidentiary requirements to establish work-relatedness. Indeed, the more unusual the workplace stressor, the clearer and more convincing the evidence is in establishing work-relatedness if the stressor can be linked to the disability.

Nevertheless, in all cases, evidence of other factors linking the stressors and the disability will be required. The amount of that evidence will vary with the degree of unusualness of the workplace stressors.

B) **Amount of contribution**

Consideration of the work-relatedness of these claims should also focus on whether the workplace had a significant or predominant role in the development of the disability.

The relative contributions of workplace and non-workplace stressors to the development of the disability is difficult to establish, even in the most straightforward of claims. Indeed, the bulk of Decision No. 918 was expended on the weighing of the contributions of the worker's personal life situation and his work life situation on the disability that he experienced.

Even if the workplace can be said to have made a significant contribution, the question of work-relatedness of a psychiatric disability may not be fully resolved. All aspects of a person's life, including but not exclusive to work, are likely to have had some impact on the individual's mental state. And indeed, the term "significant" is, as the WCAT panel in Decision No. 72 pointed out, susceptible to many different interpretations. In Decision No. 918 (as highlighted above), the panel concluded that they would be convinced of work-relatedness only where there was "clear and convincing evidence that the worker's condition was predominantly attributable to the not unusual degree of stress in his employment - that is to say, that the workplace stress 'stands out' as a significant contributor to the disability."

In the Ontario workers' compensation system, s.3(4) of the Act gives the benefit of doubt to workers where the evidence is approximately evenly balanced:

> In determining any claim under this Act, the decision shall be made in accordance with the real merits and justice of the case and where it is not practicable to determine an issue because the evidence for or against the issue is approximately equal in weight, the issue shall be resolved in favour of the claimant.

In the context of current workers' compensation system in Ontario therefore, the term "predominance" with respect to workplace factors has a broader meaning than that in common English usage and includes situations where workplace factors have at least as great a contribution to the development of a disability as non-workplace factors.

Although this requirement for predominant contribution would provide increased confidence in establishing the work-relatedness of the disability, the legal viability of the approach under the Act may be subject to challenge . One could argue that another test of causation that appears in the common law - namely that of 'material' or 'significant' contribution - must be read into the Act as the threshold for establishing work-relatedness. Thus, if this line of legal argument is sustained but a predominance test is desired as a matter of policy, a legislative amendment to the Act may be necessary.

3. Disciplinary actions

If disabilities resulting from workplace stressors are allowed, should disciplinary actions such as demotions, suspensions, and dismissals be considered as relevant stressors?

In general, such disciplinary actions would not likely be considered to be "unusual" because, although upsetting, they can be expected to arise in any workplace. For this reason, particularly clear evidence linking the disability and the workplace stressors would be required for claims related to disciplinary actions.

4. Potential effect on health

The paradoxical nature of illness resulting from workplace stressors is that, in some instances, the preferred treatment may likely be participation in work and other social activities. There is a concern that the provision of compensation may entrench a workers' own perception of himself or herself as disabled and thereby, inadvertently, prolong recovery.

Given this potential adverse effect on workers' health, it is important

that an active treatment program be required in all of these cases. While there is extensive literature on "stress management programs", there are very few treatment programs available. The Board expects to develop such treatment programs to ensure that they are available to its clients.

5. Costs

While the projection of costs is extremely difficult, it is evident that there will be an increase in both administrative and benefit costs. The Board's experience with psychiatric claims and information from other jurisdictions are limited in their ability to help cost projection. Costs will vary according to:

1) the particular approach adopted

2) the volume and complexity of claims submitted; and

3) the implementation of a treatment program.

6. Interim or final policy

A significant concern has been expressed about the ability of the workers' compensation system to develop a policy that would satisfactorily identify disabilities that are clearly work-related. Responses from external consultation indicate that there is a very weak information base for reliably predicting the administrative, financial and medical implications of a policy. These concerns, in concert with the uncertainty of the scientific literature, suggest that an interim policy should be considered.

A policy which provides an opportunity for an incremental modification to the Board's approach, based on experience, will permit the identification and compensation of the group of workers whose psychiatric disabilities can be shown to be work-related with the greatest degree of confidence. Recognizing that the Board is at the frontier with this issue, consideration could be given to modifying the approach once experience has been gained.

IV. OPTIONS

Four options are suggested with respect to the compensability of disabilities resulting from workplace stressors have been developed for consideration. All require that a psychiatric disability according to DSM-III-R be established but vary in their approach to the determination of work-relatedness as follows:

Option 1

Once the disability has been established, this option focuses attention

on the nature of the stressor that led to the development of the disability. While it does not preclude stressors over time, as the Board's current practice does, it does require that the stressors be beyond the scope of ordinary work experience. The comparison group with the least administrative complexity in the determination of unusualness would be co-workers with the same employer. However, as mentioned, other comparison groups one might consider are the average worker in the labour market as a whole and the average worker in the same occupational group.

The existence of an unusual stressor provides greater evidence regarding work-relatedness and depending upon the degree of unusualness will impact to varying degrees on a further requirement that the evidence be clear and convincing.

The final element that must be present before a claim would be allowed is evidence that the workplace stressors made a predominant contribution to the disability. Reports on the worker's psychiatric condition, that weigh the relative effect of work and non-work related factors as contributors to the disability, would be very important.

Option 2

This option is similar to option 1 in all respects, except that the unusual workplace stressor(s) must have made a significant contribution to the development of the disability.

Option 3

Once the psychiatric disability has been established, this option allows consideration of claims whether or not the stressor was unusual. Clear and convincing evidence would be required that a workplace stressor played a predominant role in the development of the disability.

Workplace stressors can be usual or unusual. Where the stressor is unusual, information regarding the nature and degree of the unusualness plays an important role in meeting the need for the clear and convincing evidence of work-relatedness required to establish a claim.

As in option 1, the workplace stressor(s) must have made at least as great a contribution to the development of the disabilities as the non-workplace stressor(s).

This option represents a broader approach than option 1 by allowing consideration of usual stressors where there is clear and convincing evidence of work-relatedness. While it does not provide the same level of confidence as the more narrow approach, the requirement for clear and convincing evidence, particularly where there is no readily identifiable factor in the workplace such as an unusual stressor, maintains a standard that would enable reasonable confidence regarding

the work-relatedness of the disability.

Option 4

This option is similar to option 3 in all respects, except that the workplace stressor(s) must have made a significant contribution to the development of the disability.

These four options have been developed from the content of the previous discussion paper, the responses from external consultation and the issues raised in this paper.

The content of this paper and the options are presented for consideration by the Board's external stakeholders over the period July to November 15, 1989.

EXTERNAL RESPONSES TO THE DISCUSSION PAPER ON COMPENSATION FOR CHRONIC OCCUPATIONAL STRESS

In early February 1989, a discussion paper on chronic occupational stress was distributed to approximately 2000 WCB manual holders, external consultation group members, occupational medicine practitioners and recognized experts in occupational stress. All recipients were asked to respond to six questions posed in the covering letter . Eighty-eight responses have been received to date (see Appendix 1). The distribution of respondents is set out below:

Employers	29
Hospitals	17
Employer Representatives	8
Worker Representatives	16
Physicians	10
Other	8
Total	88

What follows is a list of the questions posed in the discussion paper and a summary of the responses provided.

Questions 1 and 2: Are claims for chronic stress compensable under the Workers' Compensation Act? If chronic stress claims are compensable, what legal test should apply in adjudication?

There was little consensus with respect to whether a disability associated with chronic occupational stress is compensable. Many respondents seemed to address themselves to the question of whether chronic stress should, as a matter of policy, be compensable, rather than whether there is authority in the Workers' Compensation Act (the Act) to regard it as such. Those who agreed that stress is compensable under the Act argued that the statute does not preclude entitlement for such conditions, and that the likely enabling provision is section 1 (1)(a)(iii). Thus, stress would be recognized as a disablement arising out of employment.

Those who thought that stress is not compensable under the Act argued the legislation was intended to address disability due to physical injury which arises out of employment and that psychological stressors are clearly not physical.

Many respondents submitted that there exists insufficient scientific evidence to objectively establish causal relationships in any individual stress case. They suggested that stress, even if legally compensable under the Act, should not give rise to benefits for public policy reasons and several recommended that the Board seek legislative direction to undertake a policy change of this magnitude. Frequently, the floodgates argument and allegations that the policy would unduly influence workplace practices were raised.

The vast majority of respondents (outside of worker representatives) felt that caution should be exercised in the development of this policy. Stress related conditions were noted to arise from multifactorial causes which stem both from occupational and non-occupational factors. It was also pointed out that stressors exert their influence in an unpredictable and poorly understood manner. Adjudication would therefore be rendered difficult, not very objective or reliable, and expensive, both with respect to decisions concerning entitlement and the assessment of disability. It was anticipated that it would be difficult for employers to assess and monitor the validity of claims. As a consequence, it was submitted that such a policy would interfere in the longer term with hiring and other employment practices.

Those respondents who were hesitant about recognizing the compensability of occupational stress recommended that the appropriate legal test should be either that "chronic stress is never compensable" or that the occupational stress must be "unusual" for the employment, and primarily attributable to the employment.

While a large proportion of respondents endorsed the Townsend test, most worker representatives submitted that the standard of proof required by this test was more stringent than the balance of probabilities standard which has normally been adopted by the Board.

The discussion paper raised the possible limitation of benefits in stress-related claims to temporary benefits pursuant to s. 45(12). Employers who agreed with such an interpretation argued that "adjustment disorders", the conditions which a stress policy would seek to compensate, are by definition temporary. Permanent pensions for such conditions would also delay recovery by reinforcing the belief that the conditions cannot be improved.

Worker representatives submitted that s. 45(12), in permitting permanent awards for "any physical or functional abnormality or loss", must be read as including psychological difficulties. They argued that the term "functional" in this context necessarily has a meaning separate and distinct from a physical deficit, particularly given the need to interpret compensation law broadly.

Question 3: To what extent should WCB adjudicators rely on the scientific literature which has identified major occupational and non-occupational stress factors?

The distribution of responses to this question is set out below:

	Extensively/ Somewhat	Minimally/ Not at all	No Comment
Employers	11	6	12
Hospitals	4	8	5
Employer Reps	2	2	4
Worker Reps	12	2	2
Physicians	3	2	5
Other	6	0	2
Total	38	20	30

The extent to which adjudicators should rely on the scientific literature was a contentious issue. Those who felt that such reliance should be made noted that the literature, if clear and unequivocal, would be of assistance in the definition of what the terms "usual" and "unusual" mean in the occupational stress context. In this sense, the literature could be employed to assist in setting parameters within which to make adjudicative decisions.

Among those who took the contrary view, it was submitted that the literature is too insubstantial, inconclusive and unreliable to delineate true cause and effect relationships. Thus, the existing state of research was not seen as sufficient to allow differentiation of personal and occupational stress factors. In any event, adjudicators were not seen as qualified to evaluate individual studies with the necessary expertise and objectivity.

There seemed to be agreement that reliance on the literature should be made after "experts" had synthesized the relevant factors. Some respondents recommended that the opinion of the Industrial Disease Standards Panel should be sought. The resulting views would be incorporated into Board policy to be used as a guide to adjudication. These principles could be amenable to change as the literature evolves. However, in the final analysis many commentators argued that each case should be decided on its own merits rather than following strictly prescribed guidelines.

Several worker representatives commented that the discussion paper was incomplete in enumerating stressors in the workplace (e.g. noise and shiftwork were omitted). They also felt that the document had placed inadequate emphasis on the responsibility of employers to provide a psychologically supportive milieu and other preventive measures such as Employee Assistance Programs.

Question 4: How should psychiatric and psychological evidence be used in determining the cause of a stress related disability?

Responses to this question were distributed as follows:

	Extensively	Some	Not at all	No Comment
Employers	16	2	2	9
Hospitals	8	1	1	7
Employer Reps	1	1	1	5
Worker Reps	2	3	10	1
Physicians	4	2		4
Other	2	3		3
Total	33	12	14	29

The majority of respondents (particularly among employers) felt that if compensation for chronic occupational stress is accepted, psychiatric and psychological evidence should be used extensively in the adjudicative process. This material would form the backbone for sorting out the causal issues in such claims, and provide the "proof" that the stress related condition was primarily related to the work environment rather than personal factors or unfounded perceptions on the part of the worker. Those who submitted that such evidence should not be used pointed to the unreliability of expert evidence in this field.

The respondents who advocated the use of psychiatric/psychological evidence often recommended that expert panels composed of several persons with appropriate backgrounds be established to assess these cases. There could, thus, be some assurance that consistent ways of looking at the question might be developed. It was also recommended that detailed histories be obtained, with input from the employee's co-workers, families and friends. As well, assessments of the workplace, which could be used both to determine causal questions and for possible use in rehabilitation planning were recommended.

Question 5: Given the complex etiology of stress-related disabilities, would adjudication of these claims require a detailed investigation of the worker's personal life?

Responses to this question were distributed as follows:

	Yes	No	No Comment
Employers	23		6
Hospitals	11		6
Employer Reps	5		3
Worker Reps	2	13	1
Physicians	7	1	2
Other	3	3	2
Total	51	17	20

In the employer and professional communities, there was general agreement that the personal life of the worker seeking entitlement for chronic occupational stress should be examined. Such investigations were necessary so that the occupational and non-occupational sources of the stress response might be sorted out. Many of these respondents argued that this line of inquiry comprises a necessary part of the basic psychiatric interview. Furthermore, if the information was collected in this context, the necessary confidentiality safeguards would be provided. It was also recognized however, that a) such investigations would not be popular among workers, b) these evaluations would be considered intrusive, and c) physicians might be hesitant to detail non-occupational stress factors in the worker's life in assessment reports for the Board.

Those who were opposed to such detailed investigations being undertaken (largely worker representatives) cited the marginal relevance of these inquiries. They argued that the most important investigation to undertake would be the examination of the workplace to assess the validity of the worker's allegation concerning the relationship of the workplace stressors to the relevant medical condition. These respondents argued that only in exceptional circumstances would a detailed examination of the worker's life prove necessary.

Question 6: Should personnel decisions such as job demotion, transfer and layoff be considered relevant occupational stress factors in workers' compensation?

Responses to this question were distributed as follows:

	Yes	No	No Comment
Industry	5	16	8
Hospitals		10	7
Employer Reps		5	3
Worker Reps	15	1	0
Physicians	3	2	5
Other	4	2	2
Total	27	36	25

Many respondents, particularly among employers, argued that personnel decisions should be excluded from consideration should a policy on chronic occupational stress be formulated. If the opposite tack were taken, it was anticipated that the ability of organizations to manage their human resources effectively would be adversely affected. It was noted that potentially stressful personnel decisions form part of every working environment, and therefore should not be considered unusual. In any event, it was submitted that workers could address concerns about personnel practices through other avenues such as the Human Rights Code, the Employment Standards Act or the relevant collective agreement.

Respondents who felt that personnel actions should be eligible for consideration noted that the Act, prima facie does not exclude these actions. They argued that the Act is intended to address disability which arises out of and in the course of employment, irrespective of source. To the extent that personnel actions comprise bona fide workplace stressors, their exclusion was not seen as justified.

Conclusion

In general, the level of response to the discussion paper was encouraging. Many of the comments received were helpful and have provoked the need for further thinking on a number of subjects. The submissions, however, tended to provide limited guidance on the legal tests to be employed in determining whether specific conditions at work should be judged capable of supporting occupational stress claims.

Employer Representatives

Canadian Federation of Independent Business
Central Ontario Industrial Relations Institute
Council of Ontario Construction Associations
Employers Advocacy Council
Mines Accident Prevention Association of Ontario
Office of the Employer Advisor
Ontario Mining Association
Lakehead Terminal Elevator Association

Worker Representatives

Canadian Auto Workers (2 briefs)
Communication and Electrical Workers of Canada
Energy and Chemical Workers Union
Injured Workers' Consultants
Office of the Worker Adviser
Ontario Federation of Labour
Ontario Legislative Committee of the Canadian Railway Labour Association
Ontario Nurses Association
Ontario Public Service Employees Union
Ontario Secondary School Teachers' Federation
Police Association of Ontario
Public Service Alliance of Canada
The Society of Ontario Hydro Professional and Administrative Employees
United Electrical, Radio and Machine Workers of Canada(UE)
United Steelworkers of America
Workers Health and Safety Centre

Physicians

K. Adams, Kingston
R. Graham Cook, St. John's, Nfld.
G.H. Cruickshank, Courtright
C.J. Eisener, Dryden
A. Franklin, Toronto
R. Kajander, Thunder Bay
W.J. McCracken, Hamilton
W.F. Prendergast, Toronto
A. Reddoch, Whitehorse, Yukon
G. Watt, Ottava

Other

David Brady, Lawyer
Patricia Briggs, Workers' Compensation Consultant
Pearl Govan, Paralegal Practitioner
Katherine Lippel, Law Professor
Ontario Occupational Health Nurses Association
Ontario Psychological Association
Dr. Peter Pelmear, Ontario Ministry of Labour
Joy Rogers, Clarke Institute of Psychiatry

LIST OF RESPONDENTS

Employers

Algoma Steel
Apex Investigation and Security Inc.
Auto Haulaway
Build-a-Mold Ltd.
Canadian National
Canadian Pacific Ltd.
City of Nepean
City of Ottava
Collins Bay Penitentiary
Consumers Gas Co.
County of Bruce
Dofasco Inc.
Domtar Inc.
Dov Chemical Canada Inc.
Dupont Canada Inc.
Ellis-Don Construction Ltd.
Fiberglas Canada
Imperial Oil Ltd.
Lambton District Health Council
Mattabi Mines Ltd.
McDonnell Douglas Canada Ltd.
Metropolitan Toronto Region and Conservation Authority
Nova Corporation of Alberta
Ontario Hydro
Regional Municipality of Durham
Regional Municipality of Ottava-Carlton
Skyline Ottava Hotel
Somerville Packaging
T.C.C. Bottling Ltd.

Hospitals

Freeport Hospital, Kitchener
Group Health Centre, Sault Ste. Marie
Joseph Brant Memorial Hospital, Burlington
Lakehead Psychiatric Hospital, Thunder Bay
McKellar General Hospital, Thunder Bay
Mississauga Hospital, Mississauga
Ontario Hospital Association, Region #4, St. Catherines
Plummer Memorial Public Hospital, Sault Ste Marie
Queen Elizabeth Hospital, Toronto
Riverside Hospital of Ottava, Ottava
Runnymede Hospital, Toronto
St. John's Hospital, Villovdale
St. Joseph's Hospital, Blind River
St. Joseph's Hospital, North Bay
St. Josephs Health Centre, Toronto
Sarnia General Hospital, Sarnia
Wellesley Hospital, Toronto

SECTION 71-(3)

Directive 22. THE ADJUDICATION OF CLAIMS FOR PSYCHOTRAUMATIC DISABILITY

A worker is entitled to benefits when personal injury is sustained through an accident which arises out of and occurs in the course of employment. "Injury" includes both physical and emotional disability.

1. GENERAL RULE

Where it is evident that a diagnosis of a psychotraumatic disability is attributable to a compensable injury or its sequelae, entitlement shall be granted providing that the psychotraumatic disability became manifest within five years of the injury, or within five years of the last surgical procedure.

Psychotraumatic disability is considered to be a temporary condition. Only in exceptional circumstances will this type of disability be accepted as a permanent condition.

2. PSYCHOTRAUMATIC DISABILITY ENTITLEMENT

Entitlement for psychotraumatic disability may be established when the following circumstances exist or develop:

2.1 Organic brain syndrome secondary to: traumatic head injury, toxic chemicals including gases, hypoxic conditions or conditions related to decompression sickness.

2.2 As an indirect result of a physical injury.

2.2.1 Emotional reaction to the accident or injury.

2.2.2 Severe physical disability.

2.2.3 Reaction to the treatment process.

2.3 The psychotraumatic disability is shown to be related to extended disablement and to non-medical, socio-economic factors, the majority of which can be directly and clearly related to the compensable injury.

SECTION 71-(3)

3. OTHER FACTORS

The following relevant points should be evaluated in assessing the extent of psychotraumatic disability entitlement:

3.1 Prior History - In all cases where history of a prior psychiatric condition has been shown to exist, the question of allowance on an aggravation basis shall be considered, having regard for the emotional effect of the occupational occurrence and its sequelae.

3.2 Unrelated Psychiatric Disability - In some cases, psychiatric disability may become apparent in an otherwise uneventful case, and enquiry establishes its origins to other factors (such as family crisis), having no relationship whatsoever to the accident. On medical advice and under the provisions of Section 23 of the Act, allowance may be made for concurrent treatment. The psychiatric treatment will be in order during the period of active treatment for the physical disability, so long as such treatment enhances the recovery of the physical disability, in the opinion of the Board.

4. SECOND INJURY AND ENHANCEMENT FUND RELIEF

In claims for psychotraumatic disability, the Board approved policy regarding the aggravation of pre-existing conditions and application of the Second Injury and Enhancement Fund shall be applied.

5. BENEFIT OF DOUBT

Claims which do not meet the above criteria shall be individually judged on their own merits having regard for the evidence submitted. The benefit of doubt applies.

February 9, 1982
Bd. M. 4951 #11

SECTION 71-(3)

Directive 23. EVALUATION AND RATING OF IMPAIRMENT DUE TO PSYCHONEUROSIS FOLLOWING INDUSTRIAL INJURIES

The impairment due to post-traumatic neurosis is evaluated in line with the following six clinical entities, one or more of which may be present:

1. Anxiety Neurosis with Depressive Features
2. Anxiety Neurosis with Psychosomatic Manifestations (Psychological factors affecting physical condition)*(DSM III)
3. Conversion (Hysterical) Neurosis
4. Obsessive Compulsive Neurosis
5. Anxiety Neurosis with Phobic Features
6. Anxiety Neurosis with Hypochondriasis.

Consideration will be given to the predominant symptoms but, clinically, it is always a mixed state including not only the accident related anxiety depressive reaction but, also, the non-traumatic neurotic syndrome. Added to these are the superimposed personality tendencies which are important preconditioning factors in every accident.

These guidelines shall apply to the assessment of psychological lump sum awards and permanent disability awards. (Lump sum awards do not apply to Categories III and IV).

The guidelines for claims adjudication involving pre-existing conditions and application of the Second Injury and Ehancement Fund will apply.

*Diagnostic & Statistical Manual, American Psychiatric Association.

SECTION 71-(3)

CATEGORY I - Minor Impairment Of The Total Person

(10%):

In this category the injured worker's daily activity is slightly limited and no apparent difficulties are reported in personal adjustment. There is also some loss in personal or social efficiency and the secondary psychogenic aggravations are caused by the emotional impact of the accident. The outstanding symptom is the worker's statement of persistent pain which has restricted to a limited degree, the functioning ability of the injured person.

A mild anxiety reaction shall be apparent. The display of symptoms indicate a form of restlessness, some degree of subjective uneasy feelings and tension caused by anxiety. There shall be some resultant subjective limitations in functions.

The disability, from the psychiatric point of view, is not expected to be permanent.

CATEGORY II - Moderate Impairment Of The Total Person

(15% To 25%):

In this category, the worker is still capable of looking after personal needs in the home environment but, at times insidiously, confidence will diminish and the worker will be more dependent on the members of the family in all extramural activities. The worker demonstrates a moderate, at times episodical, anxiety state, agitation with "traumatophobia", nurturing strong passive dependency tendencies.

The emotional state may be compounded by objective physical discomfort with persistent pain, signs of emotional withdrawal and depressive features, loss of appetite, insomnia, chronic fatigue, low noise tolerance, mild psychomotor retardation and definite limitations in social and personal adjustment within the family. At this stage, there is a clear indication of some psychological regression and signs of atrophy will surface insidiously.

c.c. Mr. MacDonald
Mr. Reed
Mr. Farquharson

INTER-DEPARTMENTAL COMMUNICATION

APPENDIX C

RESCINDED AND SUPERSEDED BY MINUTE #11, February 9, 1982 Page 4951, "Adjudication of Claims for Psychotraumatic Disability".

TO The Board

FROM K. B. Harding, Secretary

DATE July 11, 1974

SUBJECT Policy on Psychological Disability

The Committee on Psychological Disability and its sub-committee have met on a number of occasions to consider and discuss proposals for policy changes relating to the adjudication of claims for psychological disability.

At its meeting on June 28th, 1974, the Committee reviewed the submissions and final comments and recommends that:

1. The Board approve a general policy statement as follows. "Where the information indicates that a psychological disability is a result of the accident, entitlement shall be granted for the psychological disability, attributable to the accident or its sequelae."

2. The Board approve the guidelines for adjudication of psychological disability as set out in Appendix A attached.

3. Because early recognition of the existence of psychological impairment is essential, the Board approve the process for its determination and processing as set out in Appendix B.

4. As soon as a psychological disability has been recognised and diagnosed and entitlement determined the file should be handled on a team basis by the appropriate claims officer, rehabilitation counsellor and surgical consultant to assure adequate treatment control and assurance to the employee of the Board's interest and support.

For the Board's consideration.

KBH/aw
Encl.

APPROVED BY THE BOARD
this 23rd day of July 1974
Secretary

SECTION 71-(3)

CATEGORY III - Major Impairment Of The Total Person

(30% To 50%)

In this category the worker displays a severe anxiety state, definite deterioration in family adjustment, incipient breakdown of social integration, and longer episodes of depression (depressive neurosis). The worker tends to withdraw from the family, develops severe noise intolerance and a significant diminished stress tolerance. A phobic pattern or conversion reaction will surface with some bizarre behaviour, tendencies to avoid anxiety-creating situations, with everyday activities restricted to such an extent that the worker may be homebound or even roombound at frequent intervals.

CATEGORY IV - Severe Impairment of The Total Person

(60% To 80%)

In this category, the worker displays a clear indication of chronic severe limitation of adaptation and function in the home and outside environment. The worker is withdrawn, forgetful, unable to concentrate, needs continuous emotional support within the family setting and is incapable of self-care and neglects personal hygiene.

There may be an obvious loss of interest in the environment and the worker becomes extremely irritable, showing significant emotional lability, changes of mood (near to a psychotic depressive level) and uncontrolled outbursts of temper. The worker may be severely depressed with outstanding features of psychomotor retardation and psychological regression. The worker is usually homebound or even roombound.

February 9, 1982
Bd. M. 4951 #10

ADJUDICATION OF PSYCHOLOGICAL DISABILITY

New Policy

This Board policy statement replaces the policy approved on October 2, 1969. It broadens the previous concepts of entitlement for disability involving psychological conditions. The Policy stated is a guide only and discretion may be exercised at all levels of adjudication where the evidence warrants in accordance with the principle of true merits and justice for each case individually.

General Rule

Where the information indicates that a psychological disability is a result of the accident, entitlement shall be granted for the psychological disability, attributable to the accident or its sequelae.

Psychological Disability Entitlement

May flow from the following circumstances:

(1) Organic brain damage from traumatic head injury, harmful chemical gases or conditions such as Caisson's disease.

(2) As a direct result of the physical injury by way of reaction to the accident, or to the seriousness of the disability or to the treatment rendered.

(3) As a result of extended disablement and social factors, where it is established that financial insecurity resulting from the accident, family and cultural factors combined with the sequence of events following injury have precipated the psychological disability.

(4) As a direct result of shock resulting from a frightening industrial occurrence.

It is essential that the presence of psychological disability be identified as early as possible and that positive steps be taken to control it. Early counselling will be considered as a treatment measure.

The period of disability and continuing treatment must be closely followed by the surgical consultant and treatment team. See early Recognition Appendix "B".

In all cases where a history of prior psychological disability has been demonstrated, the question of allowance on an aggravation basis shall be considered, having regard for the effect of the occupational occurrence and its sequelae.

Teamwork Essential

The need for early recognition cannot be over emphasized

and team work between the family doctor, the rehabilitation counsellor, the staff medical officer and the claims officer is essential for the encouragement of recovery. Referral for other treatment should be made at the direction of the staff doctor. The vocational rehabilitation counsellor may refer to other social agencies.

Unrelated Psychological Disability

In some cases psychological disability may become apparent in an otherwise uneventful case and inquiry establishes its origins to other factors, such as a family crisis, with no relationship whatever to the accident.

On medical advice allowance may be made for concurrent treatment in such cases to enhance the recovery from the physical disability, under the provisions of Section 23 of the Act.

Decisions as to Entitlement

Decisions as to entitlement for psychological disability should be made as soon as possible to avoid any delays in continuing benefits and to facilitate rehabilitation. Since it may be expected that the ability to return to employment in itself should relieve psychological distress, where psychological disability continues beyond the physical disability, entitlement for continuing compensation should be reviewed. The absence of physical

disability in itself is not a bar to the continuation of benefits for psychological disability.

Entitlement

(1) Permanent Disability

Psychological disability caused by trauma to the brain shall be rated as a permanent disability assessed and paid as a pension for life, or as long as the disability lasts.

(2) In cases other than one above, entitlement to payment should generally be considered as a temporary disability and paid in accordance with Sections 39 and 41 of the Act. Only in exceptional circumstances should a pension for life be considered.

(3) In all cases other than one above, entitlement should be considered on an aggravation basis and an adjustment of costs made by use of the SECOND INJURY AND ENHANCEMENT FUND.

(4) In the exceptional cases under two above, where a pension for life is considered, the percentage accepted for pension should be considered as in any other condition where aggravation of a pre-existing condition or tendency existed, and the rules of the Second Injury and Enhancement Fund should be applied.

(5) In all cases where entitlement for psychological disability has been established, a consultant psychiatrist may recommend a lump sum award for specific periods. Such awards may be recommended as a mode of treatment and are based on substantial investigation and professional advice.

Staff Requirements

It is apparent that the accomplishment of the objectives contemplated by these policy recommendations will require consideration of the need for additions to staff and consultants in all affected areas, most specifically in Rehabilitation Services including counsellors and probably also in Claims Services.